

No. 82-1216

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

WORLDWIDE CHURCH OF GOD,

PETITIONER,

v.

SUPERIOR COURT OF CALIFORNIA,  
ORANGE COUNTY (RICHARD A. GIPE,  
REAL PARTY IN INTEREST),

RESPONDENT.

RESPONDENT'S BRIEF IN OPPOSITION TO  
GRANTING OF WRIT OF CERTIORARI

ALBERT J. REYFF  
Acting Labor Commissioner  
of the State of California  
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## QUESTIONS PRESENTED

1. Does the Order of the Superior Court of Orange County, State of California, remanding the matter for trial before the Municipal Court constitute a final judgment by the highest court in the State of California?

2. Does there exist, in fact, a federal question over which this Honorable Court has jurisdiction?

## JURISDICTION

The real party in interest, RICHARD A. GIPE, contends that this Honorable Court should not assume jurisdiction of this matter under the provisions of 28 U.S.C. § 1257(3) inasmuch as there is no final judgment by the highest court in the State of California and there is no federal question involved.

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Respondent.

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Respondent's Brief in Opposition to  
Granting of Writ of Certiorari

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ARGUMENT

I

THE MATTER IS NOT RIPE FOR CONSIDERATION BY THIS HONORABLE COURT BECAUSE THERE EXISTS NO FINAL JUDGMENT BY THE HIGHEST COURT IN THE STATE OF CALIFORNIA.

In order for this Honorable Court to assume jurisdiction pursuant to 28 U.S.C. 1257(3), it must first be shown that the judgment rendered by the highest court of the State of California is final.

The order of the Appellate Department of the Superior Court of California for the County of Orange reversed a summary judgment granted by the Municipal Court of Orange County and remanded the matter to that court for further proceedings. The Court of Appeal, Fourth Appellate District, Division 2, denied a petition for writ of prohibition/mandate to review the Superior Court's action on August 26, 1982. A petition for hearing

before the California Supreme Court was denied on October 21, 1982.

This Honorable Court in its decision in Cox Broadcasting Corp. v. Cohn (1975) 420 U.S. 469, 95 S.Ct. 1029, 43 L.Ed.2d 328, discussed the "very few" circumstances where the Court will assume jurisdiction by treating the decision on the federal issue as a final judgment despite the fact that there remain additional proceedings in the state courts. None of the circumstances is present in the instant case.

The outcome of the case in the trial court is not preordained by the ruling of the Superior Court; the highest court in the state has not published an opinion which will survive; there will be an opportunity to review any federal issue if, in fact, it is necessary; and the federal issue is not dispositive of



the case.

In the case of Gospel Army v. City of Los Angeles et al. (1947) 331 U.S. 543, 67 S.Ct. 1428, a final judgment was defined as one which ends the litigation by fully determining the rights of the parties, so that nothing remains to be done by the trial court "except the ministerial act of entering the judgment which the appellate court...directed." Thus, where the effect of the state court's direction is to grant a new trial, the judgment will not be final. (Gospel Army, supra, 331 U.S. 543 at 546.)

There is no reason to believe that the trial court to which the matter has been remanded will not rule on independent state grounds. The matter, therefore, is not ripe for consideration by this Honorable Court at this time.



II

PETITIONER HAS MISCONSTRUED  
THE DETERMINATION BELOW IN  
AN EFFORT TO CREATE A FEDERAL  
QUESTION WHICH DOES NOT EXIST.

In an effort to create a federal question, the Petitioner has deliberately misconstrued the judgment of the Superior Court of California.

The court below simply admonished the trial court to which it had remanded the case to accept the relevant religious principles and application of same pursuant to this Honorable Court's decisions in Watson v. Jones (1872) 80 U.S. 679, 20 L.Ed. 669 and Jones v. Wolf (1979) 443 U.S. 595, 61 L.Ed.2d 775, 99 S.Ct. 3020. The admonition becomes applicable, of course, only if an ecclesiastical issue is raised. None has been raised.

As the lower court stated in its judgment, "The only question is whether

Appellant [Gipe] was entitled to receive severance pay upon his termination."

(See Petition, App. A, p. A8.) There is no issue as to the right of Petitioner to discharge Mr. GIPE.

The right of Mr. GIPE to recover the severance pay arises in large part from the letter of April 4, 1979 (see Petition, App. B, p. A22) which states, inter alia:

"If you cooperate in this matter and cause no further confusion or division, we will extend to you the courtesy of a week for a year of service of termination pay."

Nowhere in that sentence is it stated, as Petitioner would have us believe, that the words "confusion or division" connote any ecclesiastical meaning.

"Confusion" and "division" are not ecclesiastical words of art, but rather are very secular concepts. Webster's

Third New International Dictionary of the  
English Language, Unabridged (1971),

defines these words as follows:

Confusion:

- "(1) overthrow, defeat, ruin  
destruction
- "(2) a) a state of being dis-  
comfited, disconcerted,  
chagrined or embarrassed  
b) state of being confused  
mentally, lack of certainty,  
orderly thought or power  
to distinguish, choose or  
act decisively."

Division:

- "(1) a) the act, process, or an  
instance of dividing into  
parts or portions:  
Partition  
b) the act, process or  
instance of dividing or

distributing among a number:

Distribution, apportionment."

In its judgment, the Appellate Department of the Superior Court points out:

"Where the terms of a contract are ambiguous or uncertain and it is necessary to examine extrinsic circumstances to ascertain the intent of the parties, the trial court has a duty to construe the contract's language only after the parties are afforded an opportunity to produce evidence surrounding its effect and the conduct of the parties thereto."  
(See Petition, App. A, p. A6.)

As this Honorable Court held in the case of Jones v. Wolf (1979) 443 U.S. 595, 61 L.Ed.2d 775, 99 S.Ct. 3020, in church property disputes, state courts may apply neutral principles of law in reviewing local charters, state statutes and other documents.

Obviously, respondent has the right to a trial on the merits to establish what the language contained in the April 4, 1979 letter means. Such a secular determination does not infringe upon ecclesiastical authority nor must a court inquire into doctrinal teachings to reach a conclusion on that issue.

Recognizing the limitations placed upon judicial review of ecclesiastical tribunals set out by this Honorable Court in the case of Serbian Eastern Orthodox Diocese v. Milivojeovich (1976) 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151, one must differentiate between the issues involved: Purely ecclesiastical in the case of Serbian, etc., supra, and purely secular in the case at bar.

As Justice REHNQUIST stated in General Council on Finance and Administration of the United Methodist Church v.

Superior Court of Calif., County of San Diego (1978) 439 U.S. 1355 at 1369, 99 S.Ct. 35, 58 L.Ed.2d 63:

"Such considerations [as those found in Serbian, etc., supra] are not applicable to purely secular disputes between third parties and a particular defendant, albeit a religious affiliated organization, in which fraud, breach of contract, and statutory violations are alleged. As the Court stated in another context: 'Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may with impunity, commit frauds upon the public.'" (Citations omitted.) (General Council on Finance, etc., v. Superior Court, supra, 439 U.S. 1355 at 1373.)

Thus, to permit unbridled behavior "would be to make the professed doctrines of religious belief superior to the law of the land, and in effect, to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances." (Reynolds v. United

States (1879) 98 U.S. 145, 166-167,  
25 L.Ed. 244, 250.)

"The First Amendment does not  
require the States to adopt a rule of  
compulsory deference to religious  
authority in resolving church property  
disputes, even where no issue of  
doctrinal controversy is involved."  
(Jones v. Wolf (1979) 443 U.S. 595,  
595-596, 99 S.Ct. 3020, 61 L.Ed.2d 775.)

\* \* \*



CONCLUSION

Respondent respectfully urges that the Petition for Writ of Certiorari should be denied based upon the grounds that (1) there exists no final judgment by the highest court in the State of California, and (2) no federal question exists.

Respectfully submitted,

ALBERT J. REYFF  
Acting Labor Commissioner  
of the State of California

By H. Thomas Cadell, Jr.  
H. THOMAS CADELL, JR., Esq.  
Attorney for  
Real Party in Interest  
Richard A. Gipe

SUPREME COURT OF THE UNITED STATES

No. 82-1216, October Term 1982

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CERTIFICATE OF SERVICE

I, H. THOMAS CADELL, JR., the attorney of record for RICHARD A. GIPE, Real Party in Interest, respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 18th day of March, 1983, I served copies of Respondent's Brief in Opposition to Granting of Writ of Certiorari by depositing in the United States mail three copies thereof, with first-class postage prepaid, in an envelope addressed to each attorney of record as follows:

RALPH K. HELGE, Esq.  
201 S. Lake Ave., Suite 706  
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It is further certified that all parties required to be served have been served in accordance with Supreme Court Rule 28.

H. Thomas Cadell, Jr.  
H. THOMAS CADELL, JR., Esq.  
Attorney for  
Real Party in Interest  
Richard A. Gipe